

AMENDED IN ASSEMBLY AUGUST 12, 2008

AMENDED IN ASSEMBLY AUGUST 4, 2008

AMENDED IN ASSEMBLY JULY 14, 2008

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AMENDED IN SENATE MARCH 26, 2008

SENATE BILL

No. 1386

Introduced by Senator Lowenthal

(Principal coauthor: Assembly Member Garcia)

(Coauthor: Senator Wiggins)

(Coauthors: Assembly Members Mullin, Saldana, Swanson, and Wolk)

February 21, 2008

An act to amend Sections 1102.6 and 1102.6d of the Civil Code, and to amend Sections 13113.8 and 19211 of, to add Sections ~~17926.1 and 17926.2 to, 17926, 17926.1, 17926.2, and 17926.3 to, and to~~ to add Chapter 8 (commencing with Section 13260) to Part 2 of Division 12 of, ~~and to add and repeal Sections 17926 and 17926.3 of,~~ the Health and Safety Code, relating to residential building safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Lowenthal. Residential building safety.

(1) Existing law requires the State Fire Marshal to adopt regulations and standards regarding the quality and installation of burglar bars and safety release mechanisms for emergency escape and rescue windows, the approval and installation of smoke detectors, and the approval of

portable fire extinguishers for marketing, distribution, and sale in this state. Existing law requires a smoke detector approved and listed by the State Fire Marshal to be installed in a dwelling unit intended for human occupancy. Existing law also requires the transferor of real property containing a single-family dwelling to provide transferees written notice of compliance with specified requirements for the installation of smoke detectors.

This bill would instead require the transferor to disclose to the prospective purchaser the transferor's compliance with that provision, as specified.

The State Housing Law creates standards for buildings used for human habitation. A violation of that law is a misdemeanor.

~~This bill would for the purposes of that law require the State Fire Marshal to *certify and* approve carbon monoxide devices for the use in dwelling units intended for human occupancy, as defined. Until specified building standards are enacted, the~~ The bill would require a carbon monoxide device to be installed in a dwelling unit intended for human occupancy, as specified, and would generally provide that a violation of these provisions is an infraction punishable by a maximum fine of \$200 for each offense, but the bill would require that a property owner receive a 30-day notice to correct. By creating a new crime, this bill would create a state-mandated local program.

This bill would require an owner or the owner's agent of a dwelling unit intended for human occupancy who rents or leases space to a tenant to maintain carbon monoxide devices in that dwelling unit. The bill would also permit the owner or the owner's agent to enter that dwelling unit to install, repair, test, and maintain carbon monoxide devices, as specified. The bill would further require, effective 2 years after the adoption of the 2010 edition of the California Building Standards Code, the transferor of any single-family dwelling to provide a written disclosure to the prospective purchaser of the transferor's compliance with specified requirements for the installation of carbon monoxide devices, as specified.

The bill would require the Department of Housing and Community Development, after consultation with the State Fire Marshal, to *develop and* propose building standards consistent with the bill's provisions, as specified. The bill would ~~authorize~~ *require* the State Fire Marshal ~~and the Department of Housing and Community Development~~ to charge an appropriate fee to the manufacturer of a carbon monoxide device to cover the costs associated with the approval and listing of carbon

monoxide devices and the development of regulations. The bill would authorize the California Building Standards Commission to delay implementation of these provisions upon a specified finding regarding a product shortage. *the costs of the Department of Housing and Community Development for the development and proposal of building standards.* The bill would also make related legislative findings and declarations.

(2) Existing law requires all new and replacement water heaters, and all existing residential water heaters, to be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. Existing law also requires the seller of any real property containing a water heater to certify in writing to the prospective purchaser that this provision has been complied with.

This bill would instead require the transferor of any real property containing a water heater to ~~disclose~~ *certify* that compliance in writing to the prospective purchaser, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1102.6 of the Civil Code is amended to
2 read:
3 1102.6. The disclosures required by this article pertaining to
4 the property proposed to be transferred are set forth in, and shall
5 be made on a copy of, the following disclosure form:

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1 SEC. 2. Section 1102.6d of the Civil Code is amended to read:
2 1102.6d. Except for manufactured homes and mobilehomes
3 located in a common interest development governed by Title 6
4 (commencing with Section 1351), the disclosures applicable to
5 the resale of a manufactured home or mobilehome pursuant to
6 subdivision (b) of Section 1102 are set forth in, and shall be made
7 on a copy of, the following disclosure form:

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1 SEC. 3. Section 13113.8 of the Health and Safety Code is
2 amended to read:

3 13113.8. (a) On and after January 1, 1986, every single-family
4 dwelling and factory-built housing, as defined in Section 19971,
5 that is sold shall have an operable smoke detector. The detector
6 shall be approved and listed by the State Fire Marshal and installed
7 in accordance with the State Fire Marshal's regulations. Unless
8 prohibited by local rules, regulations, or ordinances, a
9 battery-operated smoke detector shall be deemed to satisfy the
10 requirements of this section.

11 (b) The transferor of any real property containing a single-family
12 dwelling, as described in subdivision (a), subject to Section 1102
13 of the Civil Code, shall disclose to the prospective purchaser the
14 transferor's compliance with this section. This disclosure shall be
15 made in writing, and may be included in existing transactional
16 documents, including, but not limited to, a real estate sales contract
17 or receipt for deposit, or a transfer disclosure statement pursuant
18 to Section 1102.6, 1102.6a, or 1102.6d of the Civil Code.

19 (c) No liability shall arise, nor any action be brought or
20 maintained against, any agent of any party to a transfer of title,
21 including any person or entity acting in the capacity of an escrow,
22 for any error, inaccuracy, or omission relating to the disclosure
23 required to be made by a transferor pursuant to this section.
24 However, this subdivision does not apply to a licensee, as defined
25 in Section 10011 of the Business and Professions Code, where the
26 licensee participates in the making of the disclosure required to
27 be made pursuant to this section with actual knowledge of the
28 falsity of the disclosure.

29 (d) Except as otherwise provided in this section, this section
30 shall not be deemed to create or imply a duty upon a licensee, as
31 defined in Section 10011 of the Business and Professions Code,
32 or upon any agent of any party to a transfer of title, including any
33 person or entity acting in the capacity of an escrow, to monitor or
34 ensure compliance with this section.

35 (e) No transfer of title shall be invalidated on the basis of a
36 failure to comply with this section, and the exclusive remedy for
37 the failure to comply with this section is an award of actual
38 damages not to exceed one hundred dollars (\$100), exclusive of
39 any court costs and attorney's fees.

(f) Local ordinances requiring smoke detectors in single-family dwellings may be enacted or amended. However, the ordinances shall satisfy the minimum requirements of this section.

(g) For the purposes of this section, “single-family dwelling” does not include a manufactured home as defined in Section 18007, a mobilehome as defined in Section 18008, or a commercial coach as defined in Section 18001.8.

(h) This section shall not apply to the installation of smoke detectors in dwellings intended for human occupancy, as defined in and regulated by Section 13113.7 of the Health and Safety Code, as added by Senate Bill 1448 in the 1983–84 Regular Session.

SEC. 4. Chapter 8 (commencing with Section 13260) is added to Part 2 of Division 12 of the Health and Safety Code, to read:

CHAPTER 8. CARBON MONOXIDE POISONING PREVENTION ACT
OF 2008

13260. This chapter shall be known and may be cited as the Carbon Monoxide Poisoning Prevention Act of 2008.

13261. The Legislature finds and declares all of the following:

(a) According to the ~~Centers for Disease Control and Prevention~~ *American Medical Association*, carbon monoxide is the leading cause of accidental poisoning deaths in the United States. Each year carbon monoxide kills ~~more than 2,000~~ *approximately 500* people and injures another 15,000 people nationwide.

(b) According to the United States Environmental Protection Agency, a person cannot see or smell carbon monoxide. At high levels carbon monoxide can kill a person in minutes. Carbon monoxide is produced whenever any fuel, such as gas, oil, kerosene, wood, or charcoal, is burned.

(c) The State Air Resources Board estimates that every year carbon monoxide accounts for between 30 and 40 avoidable deaths, possibly thousands of avoidable illnesses, and between 175 and 700 avoidable emergency room and hospital visits.

(d) There are well-documented chronic health effects of acute carbon monoxide poisoning or prolonged exposure to carbon monoxide, including, but not limited to, lethargy, headaches, concentration problems, amnesia, psychosis, Parkinson’s disease, memory impairment, and personality alterations.

1 (e) Experts estimate that equipping every home with a carbon
2 monoxide device would cut accident-related costs by 93 percent.
3 Sixteen states and a number of large cities have laws mandating
4 the use of carbon monoxide devices.

5 (f) Carbon monoxide devices provide a vital, highly effective,
6 and low-cost protection against carbon monoxide poisoning and
7 these devices should be made available to every home in California.

8 13262. For purposes of this chapter, the following definitions
9 shall apply:

10 (a) “Carbon monoxide device” means a device that meets all of
11 the following requirements:

12 (1) A device designed to detect carbon monoxide and produce
13 a distinct, audible alarm.

14 (2) A device that is battery powered, a plug-in device with
15 battery backup, or a device installed as recommended by Standard
16 720 of the National Fire Protection Association that is either wired
17 into the alternating current power line of the dwelling unit with a
18 secondary battery backup or connected to a system via a panel.

19 (3) If the device is combined with a smoke detector, the
20 combined device shall comply with all of the following:

21 (A) The standards that apply to carbon monoxide alarms as
22 described in this chapter.

23 (B) The standards that apply to smoke detectors, as described
24 in Section 13113.7.

25 (C) The combined device emits an alarm or voice warning in a
26 manner that clearly differentiates between a carbon monoxide
27 alarm warning and a smoke detector warning.

28 (4) The device has been tested and certified, pursuant to the
29 requirements of the American National Standards Institute (ANSI)
30 and Underwriters’ Laboratories Inc. (UL) as set forth in either
31 ANSI/UL 2034 or ANSI/UL 2075, by a nationally recognized
32 testing laboratory listed in the directory of approved testing
33 laboratories established by the Building Materials Listing program
34 of the Fire Engineering Division of the Office of the State Fire
35 Marshal of the Department of Forestry and Fire Protection.

36 (b) “Dwelling unit intended for human occupancy” includes a
37 single-family dwelling, factory-built home as defined in Section
38 19971, duplex, lodging house, dormitory, hotel, motel,
39 condominium, stock cooperative, time-share project, or dwelling
40 unit in a multiple-unit dwelling unit building or buildings.

1 “Dwelling unit intended for human occupancy” does not include
2 a property owned or leased by the state, *the Regents of the*
3 *University of California*, or a local governmental agency.

4 (c) “Fossil fuel” means coal, kerosene, oil, wood, fuel gases,
5 and other petroleum or hydrocarbon products, which emit carbon
6 monoxide as a byproduct of combustion.

7 13263. (a) (1) The State Fire Marshal shall develop a
8 *certification and decertification* process to approve and list carbon
9 monoxide devices *and to disapprove and delist previously*
10 *approved devices, if necessary. The certification and decertification*
11 *process shall include consideration of effectiveness and reliability*
12 *of the devices, including, but not limited to, their propensity to*
13 *record false alarms.*

14 (2) The State Fire Marshal ~~and the Department of Housing and~~
15 ~~Community Development shall be authorized to~~ *shall* charge an
16 appropriate fee to the manufacturer of a carbon monoxide device
17 to cover ~~the his or her~~ costs associated with the approval and listing
18 of carbon monoxide devices *and the costs of the Department of*
19 *Housing and Community Development for the development and*
20 *proposal of building standards pursuant to Section 17926.3.*

21 (b) Notwithstanding subdivision (a), a person shall not market,
22 distribute, offer for sale, or sell any carbon monoxide device in
23 this state unless the device has been approved and listed by the
24 State Fire Marshal.

25 13264. An owner of a dwelling unit intended for human
26 occupancy shall comply with regulations and building standards
27 regarding carbon monoxide devices in this chapter and in Sections
28 17926 to 17926.3, inclusive.

29 SEC. 5. Section 17926 is added to the Health and Safety Code,
30 to read:

31 17926. (a) A carbon monoxide device, approved and listed by
32 the State Fire Marshal pursuant to Section ~~13266~~ *13263*, shall be
33 ~~installed, in accordance with the manufacturer’s instructions,~~
34 *installed* in each dwelling intended for human occupancy having
35 a fossil fuel burning heater or appliance, fireplace, or an attached
36 garage, within the earliest applicable time period as follows:

37 (1) For all existing single-family dwelling units intended for
38 human occupancy on or before July 1, 2010.

39 (2) For all new single-family and multiple-family residential
40 construction one year after the effective date of the 2010 edition

1 of the California Building Standards Code (Part 2 (commencing
2 with Section 101) of Title 24 of the California Code of
3 Regulations), ~~which Regulations)~~ *that* includes regulation of carbon
4 monoxide devices.

5 (3) For all ~~existing multiple-family dwelling unit buildings other~~
6 ~~dwelling units intended for human occupancy~~ on the first January
7 1 or July 1 that occurs more than two years after the publication
8 date of the 2010 edition of the California Building Standards Code
9 (Part 2 (commencing with Section 101) of Title 24 of the California
10 Code of Regulations) *that includes regulation of carbon monoxide*
11 *devices*.

12 (b) (1) Notwithstanding Section 17995, except as provided in
13 paragraph (2), a violation of this section is an infraction punishable
14 by a maximum fine of two hundred dollars (\$200) for each offense.

15 (2) Notwithstanding paragraph (1), a property owner shall
16 receive a 30-day notice to correct. The owner may be assessed a
17 fine for the failure to correct within that time period.

18 (c) A local ordinance requiring carbon monoxide devices may
19 be enacted or amended if the ordinance is consistent with this
20 chapter.

21 ~~(d) This section shall become inoperative on the effective date~~
22 ~~of building standards referred to in this section and in Section~~
23 ~~17926.3 developed by the Department of Housing and Community~~
24 ~~Development and adopted and approved by the California Building~~
25 ~~Standards Commission and shall be repealed on the January 1~~
26 ~~following the inoperative date, unless a later enacted statute, that~~
27 ~~is enacted before that date, deletes or extends that date.~~

28 SEC. 6. Section 17926.1 is added to the Health and Safety
29 Code, to read:

30 17926.1. (a) An owner or owner's agent of a dwelling unit
31 intended for human occupancy who rents or leases space to a tenant
32 shall maintain carbon monoxide devices in that dwelling unit
33 consistent with this chapter.

34 (b) An owner or the owner's agent may enter any dwelling unit,
35 efficiency dwelling unit, guest room, and suite owned by the owner
36 for the purpose of installing, repairing, testing, and maintaining
37 single station carbon monoxide devices required by this section.
38 Except in cases of emergency, the owner or owner's agent shall
39 give the tenants of each unit, room, or suite reasonable notice in
40 writing of the intention to enter and shall enter only during normal

1 business hours. Twenty-four hours shall be presumed to be
2 reasonable notice in the absence of evidence to the contrary.

3 (c) The carbon monoxide device shall be operable at the time
4 that the tenant takes possession. A tenant shall be responsible for
5 notifying the owner or owner's agent if the tenant becomes aware
6 of an inoperable or deficient carbon monoxide device within his
7 or her unit. The owner or owner's agent shall correct any reported
8 deficiencies or inoperabilities in the carbon monoxide device and
9 shall not be in violation of this section for a deficient or inoperable
10 carbon monoxide device when he or she has not received notice
11 of the deficiency or inoperability.

12 (d) This section shall not affect any rights which the parties may
13 have under any other provision of law because of the presence or
14 absence of a carbon monoxide device.

15 (e) For purposes of this section, with respect to a time-share
16 project, "owner" means the homeowners' association of the
17 time-share project.

18 SEC. 7. Section 17926.2 is added to the Health and Safety
19 Code, to read:

20 17926.2. (a) Effective two years after the adoption of the 2010
21 edition of the California Building Standards Code (Part 2
22 (commencing with Section 101) of Title 24 of the California Code
23 of Regulations), as adopted pursuant to Section ~~13266~~ 13263, or
24 earlier at the option of the transferor, the transferor of any real
25 property containing a single-family dwelling, the transfer of which
26 is subject to Section 1102 of the Civil Code, shall disclose to the
27 prospective purchaser the transferor's compliance with Section
28 ~~13266~~ 13263. This disclosure shall be made in writing, and may
29 be included in existing transactional documents, including, but not
30 limited to, a real estate sales contract or receipt for deposit, or a
31 transfer disclosure statement pursuant to Section 1102.6, 1102.6a,
32 or 1102.6d of the Civil Code.

33 (b) Liability shall not arise, and an action shall not be brought
34 or maintained against, an agent of a party to a transfer of title,
35 including a person or entity acting in the capacity of an escrow,
36 for any error, inaccuracy, or omission relating to the disclosure
37 made by a transferor pursuant to this section. However, this
38 subdivision does not apply to a licensee, as defined in Section
39 10011 of the Business and Professions Code, where the licensee
40 participates in the making of the disclosure required to be made

pursuant to this section with actual knowledge of the falsity of the disclosure.

(c) Except as otherwise provided in this section, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, to monitor or ensure compliance with this section.

(d) A transfer of title shall not be invalidated on the basis of a failure to comply with this section, and the exclusive remedy for the failure to comply with this section is an award of actual damages not to exceed one hundred dollars (\$100), exclusive of court costs and attorney's fees.

SEC. 8. Section 17926.3 is added to the Health and Safety Code, to read:

17926.3. (a) ~~(1)~~—The Department of Housing and Community Development shall, after consultation with the State Fire Marshal, *develop and propose building standards consistent with the intent of this chapter the Carbon Monoxide Poisoning Prevention Act of 2008 (Chapter 8 (commencing with Section 13260) of Part 2 of Division 12) for consideration by the California Building Standards Commission during the 2010 California Building Standards Code adoption cycle, or at a later date if the department, in consultation with the State Fire Marshal, determines that there is not a sufficient amount of tested and approved devices to meet the requirements of the Carbon Monoxide Poisoning Prevention Act of 2008, and other regulations applicable to existing housing if deemed necessary to implement that act..*

~~(2) The State Fire Marshal shall develop a process to approve and list carbon monoxide devices.~~

~~(3) The State Fire Marshal and the Department of Housing and Community Development shall be authorized to charge an appropriate fee to the manufacturer of a carbon monoxide device to cover the costs associated with the approval and listing of carbon monoxide devices and the development of regulations.~~

~~(b) Notwithstanding subdivision (a), a person shall not market, distribute, offer for sale, or sell any carbon monoxide device in this state unless the device has been approved and listed by the State Fire Marshal.~~

~~(e) (1) The California Building Standards Commission shall be authorized to delay the implementation of this chapter upon adopting a finding by the Director of the Department of Housing and Community Development of a verifiable product shortage that would negatively impact the implementation of this chapter.~~

~~(2)~~

~~(b) If the State Fire Marshal Department of Housing and Community Development or the California Building Standards Commission adopts regulations or standards after July 1, 2010, that modify the later updates or revise the regulations of building standards in a manner that modifies the original requirements imposed by this section, the owner or owner's agent shall not be required to install a new device meeting the requirements of those regulations or building standards within an individual dwelling unit until the owner makes application for a permit for alterations, repairs, or additions to that dwelling unit, the cost of which will exceed one thousand dollars (\$1,000).~~

~~(d) This section shall become inoperative on the effective date of building standards referred to in this section and in Section 17926 developed by the Department of Housing and Community Development and adopted and approved by the California Building Standards Commission, and shall be repealed on the January 1 following the inoperative date, unless a later enacted statute, that is enacted before that date, deletes or extends that date.~~

SEC. 9. Section 19211 of the Health and Safety Code is amended to read:

19211. (a) Notwithstanding Section 19100, all new and replacement water heaters, and all existing residential water heaters, shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. At a minimum, any water heater shall be secured in accordance with the California Plumbing Code, or modifications made thereto by a city, county, or city and county pursuant to Section 17958.5.

(b) The transferor of any real property containing a water heater shall ~~disclose~~ *certify* to the prospective purchaser that this section has been complied with. This ~~disclosure~~ *certification* shall be made in writing, and may be included in existing transactional documents, including, but not limited to, the Homeowner's Guide to Earthquake Safety published pursuant to Section 10149 of the Business and Professions Code, a real estate sales contract or

1 receipt for deposit, or a transfer disclosure statement pursuant to
2 Section 1102.6, 1102.6a, or 1102.6d of the Civil Code.

3 (c) An owner of a residential rental property shall not evict any
4 person on the basis that the eviction is required in order to comply
5 with this section.

6 (d) For the purposes of subdivision (a), “water heater” means
7 any standard water heater with a capacity of not more than 120
8 gallons for which a preengineered strapping kit is readily available.

9 (e) Notwithstanding Section 669 of the Evidence Code, the
10 failure of any person to comply with this section shall not create
11 a presumption of a failure by that person to exercise due care.

12 (f) Any building or portion thereof, including any dwelling unit,
13 guestroom, suite of rooms, or portions thereof, or the premises on
14 which it is located is deemed to be a nuisance if it is in violation
15 of this section. The owner or the owner’s agent shall have the right
16 to correct any violation of subdivision (a) pursuant to Section
17 17980.

18 SEC. 10. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.